

USSN 10/808,624

Atty Docket No. PIERCE 001

REMARKS

Claims 1-21 have been canceled. New claims 22-40 are presented herein. New claims 22-40 conform to Applicant's previous election of Group A of the restriction requirement dated December 31 2002. Support for new claims 22-40 is found throughout Applicant's specification and drawings, and particularly at paragraphs 22, 24, 26 and 29, and FIG. 1-7. No new matter is introduced.

1. Claim Rejections Under 35 USC §102

Claims 1, 2 and 5 were rejected under 35 USC §102(b) as being anticipated by Tipps, US 5356022. Claims 1-5 were rejected under 35 USC §102(b) as being anticipated by Stowitts, US 2670128 and by Farrell, US 2496043. Applicants have canceled claims 1-5, thus rendering these rejections moot.

2. Claim Rejections Under 35 USC §103

Claims 1-10 and 12-21 were rejected under 35 USC §103 as being unpatentable over McNeil, US 2156999 in view of any of Tipps, Stowitts or Farrell. Claim 11 was rejected as being unpatentable over this prior art combination and further in view of Boonzaier, US 6378733. The Examiner stated in particular that McNeil disclosed all of the structures of Applicants claimed container except offsetting the fold lines between the closure flaps and sidewalls, that Tipps, Stowitts and Farrell teach the offset of closure flap fold lines, and that it would have been obvious to offset the closure flaps of McNeil as taught by Tipps, Stowitts or Farrell.

The Applicants note that each of the side panels and corner panels of the McNeil carton include foldable top and bottom flaps, with flaps 20, 21, 22 and 26 being associated with panels 9, 11, 13 and 15 respectively by fold line 18, and with flaps 23, 24, 25 and 27 respectively associated with "corner" panels 10, 12, 14 and 16 by fold line 19. In other words, each panel of the McNeil carton includes top and bottom flaps. This arrangement of flaps provides an air space at the top and bottom of the container that retards moisture absorption by the contents of the carton (col. 1 lines 10-15, col. 3 lines 5-10, FIG. 3 and FIG. 4).

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In Applicants container, only the side panels 12, 14, 16, 18 include top and bottom foldable flaps. The corner panels 20, 22, 24 and 26 do not include foldable flaps as in the McNeil carton. Corner panels 20, 22, 24 and 26 of Applicants' container each include top ends 66, 68, 70, 72 that extend to or are otherwise flush with the top plane 30 and first top fold crease 42, and corner panels 20, 22, 24 and 26 each further include bottom ends 74, 76, 78, 80 that extend to or are otherwise flush with the bottom plane 32 and first bottom fold crease 52 (see, e.g., Applicants' paragraphs 22, 24, 26 and 29, and FIG. 1). No foldable portions are associated with the corner panels.

Claims 1-21 have been canceled, as noted above. The above structural differences between Applicants' container and the McNeil container should be kept in mind when considering Applicants new claims below.

### 3. New Claims

New independent claim 22 includes the limitations of original claims 1, 2 and 6, and further recites the additional limitations "said first, second, third and fourth corner panels each having a top end extending to said first top fold line and said top plane" and "said first, second, third and fourth corner panels each having a bottom end extending to said first bottom fold line and said bottom plane". These limitations are not taught by McNeil, as the corner panels of the McNeil carton each include top and bottom flaps that extend past (above or below) the top and bottom fold lines. Neither McNeil, considered alone or together with any of Tipps, Stowitts or Farrell, teach or suggest a container having corner panels wherein the top and bottom ends of the corner panel extend to the top and bottom planes of the container, or to a specific fold line, as recited in Applicants' new claim 22. Accordingly, Applicants respectfully believe that new claim 22 is patentably distinct from the combined teachings of McNeil with Tipps, Stowitts and/or Farrell. Claims 23-30 depend from claim 22 and are believed to be patentable for the same reasons.

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New independent claim 31 includes the limitations

“(h) said first, second third and fourth corner panels each having first, second, third and fourth top ends respectively, said first, second, third and fourth top ends extending above said second, third and fourth top creases to said top plane; and  
(i) said first, second third and fourth corner panels each having first, second, third and fourth bottom ends respectively, said first, second, third and fourth top ends extending below said second, third and fourth bottom creases to said bottom plane”.

These specific limitations are not disclosed or suggested by McNeil, considered either alone or in combination with any of Tipps, Stowitts and/or Farrell. For the reasons presented above, the Applicants believe that new claim 31 and its dependent claims 32-40 are patentable over the combined teachings of McNeil with Tipps, Stowitts and/or Farrell.

The Applicants also believe that persons skilled in the art would not be motivated to remove the foldable flaps from the corner panels of the McNeil carton. A primary object of the McNeil invention is to provide a carton with an air space at the top and bottom of the container to avoid moisture absorption. Removal of flaps 23, 24, 25 and 27 from the corner panels 10, 12, 14 and 16 of McNeil would reduce the air space and interfere with the stated purpose of preventing moisture absorption of the container contents.

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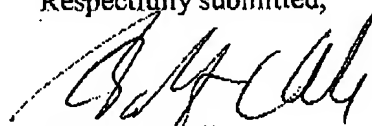
CONCLUSION

In view of the foregoing amendments and remarks, the Applicants respectfully believe that new claims 22-40 are patentably distinct from the prior art of record. The Applicant believes that claims 22-40 are in condition for allowance. If the Examiner finds that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

FEES

Eighteen claims are pending, of which two are independent. No fees should be due.

Respectfully submitted,



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